(3) (1)

Final

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

WRIT PETITION NO. 2189 /2003

PETITIONER : Hardevlal Rathia S/o Sanatram
Aged about 40 years, Sarpanch,
Gram Panchayat, Munund,
Tahsil Dharamjaigarh,
Distt. Raigarh (C.G.)

P. R. No. 19/5/03
Presented by Shri K.N. Nande
dated 16.5.03

VERSUS

RESPONDENTS : 1. Purushottam S/o Ram Baiga Rathia
Up-sarpanch, Gram Panchayat
Munund, Tah. Dharamjaigarh,
Distt. Raigarh (C.G.)

2. Anupam Tiwari,
Naib Tahsildar, Dharamjaigarh,
Distt. Raigarh (C.G.)

3. Chief Executive Officer,
Janapad Panchayat Dharamjaigarh,
Distt Raigarh (C.G.)

4. State of Chhattisgarh,
Through Collector, Raigarh (C.G.)

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शपथ आयुक्त
एम.के शुक्ला
बिलासपुर (छ.ग.)
बिलासपुर तहसील

WRIT PETITION UNDER ARTICLES 226AND 227 OF THE CONSTITUTION OF INDIA

(1) **PARTICULARS OF THE PETITIONERS** :

As per the cause title.

(2) **PARTICULARS OF THE RESPONDENTS** :

As per the cause title.

XI-HC-22

(26)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. NO. 2189/2003 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	18/08/2003 Shri K.N. Nande, counsel for the petitioner. Shri Praveen Das, P.L. for the State/respondents no. 3 and 4 By this petition under Section 226/227 of the Constitution of India, the petitioner has challenged the order dated 31/12/2002 passed by the Collector, Raigarh in Panchayat Appeal No.39/A-89/2002-2003. The Collector dismissed the appeal of the petitioner filed against the no-confidence motion dated 29/07/2002 by which the petitioner was removed from the post of Sarpanch, Gram Panchaayat, Munund. I have heard Mr. Nande learned counsel for the petitioner and Mr. P. Das, counsel for the respondents no.3 and 4. Learned counsel for the petitioner submits that a perusal of the resolution (Annexure A/2) reveals that on the date of the resolution i.e., 29/07/2002 the presence of Sarpanchs, Up-Sarpanchs and other Panchas, in all 20, has been shown whereas perusal of Minutes of Meeting shows that only 16	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

members of Panchayat participated in the no-confidence motion and that is how the four Panchas were deprived from casting of their votes. He further submitted that on 17/07/2002 ten Panchas made a representation with the affidavit that they had not signed the papers for moving of no-confidence motion and their signatures were obtained on a blank paper. The learned S.D.O. should have conducted the enquiry into the allegations of the Panchas.

In view of the above, learned counsel for the petitioner submitted that as the four members had not participated in the Meeting of No-confidence Motion. Therefore, the Meeting was not fair, reasonable and the disputed as such the order of the Collector as well as the resolution dated 29/07/2002 are liable to be set aside.

A perusal of the order of the Collector, Raigarh dated 31/12/2002 reveals that both the contentions have been rejected by the learned Collector. It is true that in column no.2 it has been shown that all 20 Members were present, but if we look into the column with respect to Minutes of the

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Meeting it has been specifically mentioned that only 16 Panchas including the petitioner were present in the meeting. The provisions of Section 21 of C.G. Panchayat Raj Avam Gram Swaraj Adhiniyam 1993 (for short, the Act) lays down that on a motion of no-confidence being passed by the Gram Panchayat by a resolution passed by majority of not less than three fourth of the Panchas present and voting and such majority is more than two third of the total number of Panchas constituting the Gram Panchayat, for the time being, the Sarpanch or Up-Sarpanch against whom such motion is passed, shall cease to hold office forthwith. According to this provision, when 16 members of the Panchayat including the petitioner were present that the quoram was more than two-third of the total number of Panchas constituting the Gram Pancahayat on the date and also it fulfils the other requirements that not less than three-fourth of the Panchas present passed the No-confidence Motion against the petitioner i.e., 16 members were present and out of 16, 15 Members voted against the	

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आदेश पत्रक

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petitioner. Therefore, the resolution was passed in consonance of the provisions of the Act.

Now coming to the question that on 17/07/2002 ten Panchas gave in writing with affidavit to the S.D.O. that they had not signed the papers regarding moving the No-confidence Motion. The proceedings dated 29/07/2002, which were conducted, in the presence and under the supervision of Anupam Tiwari, Naib Tahsildar, Dharamjaigarh, Dist. Raigarh 16 members of the Panchayat were present including the petitioner. If the ten Panchas moved an application on 17/07/2002, then they were at liberty to raise objection in the meeting itself that they have not moved any such application for the no-confidence motion. On the contrary, perusal of the proceedings reveals that opportunity was given to the Panchas to speak whatever they want to speak i.e., whether in favour of the motion or against the motion. Opportunity was also given to the petitioner, but he had not said anything. Therefore, by any stretch of imagination it cannot be said that the memorandum dated 17/07/2002 was not taken care of at the

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	time of proceedings. Had the ten Panchas moved such an application then they were within the right to raise the point in the meeting itself, but they had not raised any objection and on the contrary they voted in favour of the no-confidence motion. There is therefore no substance in the submissions and in view of the above, I do not find any substance in the writ petition and the same is liable to be dismissed and it is dismissed. Sd/- L.C. Bhadoo Judge	

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